

## § 220.37

(iv) At least 5 consecutive months elapse from the month in which the period of disability begins and before the month in which it would end.

(6) *Application for a period of disability.*

(i) An application for an employee disability annuity under the Railroad Retirement Act or an employee disability benefit under the Social Security Act is also an application for a period of disability.

(ii) An employee who is receiving an age annuity or who was previously denied a period of disability must file a separate application for a period of disability.

(iii) In order to be entitled to a period of disability, an employee must apply while he or she is disabled or not later than 12 months after the month in which the period of disability ends.

(iv) An employee who is unable to apply within the 12-month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(v) A period of disability can also be established on the basis of an application filed within 3 months after the month a disabled employee died.

(c) *Social security overall minimum.* The social security overall minimum provision of the Railroad Retirement Act guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly benefit which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

(The information collection requirements contained in paragraph (b)(6) were approved by the Office of Management and Budget under control number 3220-0002)

### **§ 220.37 When a child's disability determination is governed by the regulations of the Social Security Administration.**

(a) In order to receive an annuity based upon disability, a child of a deceased employee must be found disabled under the Railroad Retirement

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Act. However, in addition to this determination, the child must be found disabled under the Social Security Act in order to qualify for Medicare based upon disability.

(b) Although the child of a living employee may not receive an annuity under the Railroad Retirement Act, he or she, if found disabled under the Social Security Act, may qualify for the following:

(1) Inclusion as a disabled child in the employee's annuity rate under the social security overall minimum.

(2) Entitlement to Medicare based upon disability.

### **§ 220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.**

In order to receive an annuity based upon disability, a widow(er) must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the widow(er) must be found disabled under the Social Security Act in order to qualify for early Medicare based upon disability.

### **§ 220.39 Disability determination for a surviving divorced spouse or remarried widow(er).**

A surviving divorced spouse or a remarried widow(er) must be found disabled under the Social Security Act in order to qualify for both an annuity under the Railroad Retirement Act and early Medicare based upon disability. Disability determinations for surviving divorced spouses and remarried widow(er)s are governed by the applicable regulations of the Social Security Administration, found at § 404.1577 of this title.

## **Subpart F—Evidence of Disability**

### **§ 220.45 Providing evidence of disability.**

(a) *General.* The claimant for a disability annuity is responsible for providing evidence of the claimed disability and the effect of the disability on the ability to work. The Board will assist the claimant, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the

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expense of the Board as explained in §§ 220.50 and 220.51.

(b) *Kind of evidence.* The claimant must provide medical evidence showing that he or she has an impairment(s) and how severe it is during the time the claimant claims to be disabled. The Board will consider only impairment(s) the claimant claims to have or about which the Board receives evidence. Before deciding that the claimant is not disabled, the Board will develop a complete medical history (i.e., evidence from the records of the claimant's medical sources) covering at least the preceding 12 months, unless the claimant says that his or her disability began less than 12 months before he or she filed an application. The Board will make every reasonable effort to help the claimant in getting medical reports from his or her own medical sources when the claimant gives the Board permission to request them. Every reasonable effort means that the Board will make an initial request and, after 20 days, one follow-up request to the claimant's medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the follow-up request to reply (unless experience indicates that a longer period is advisable in a particular case). In order to expedite processing the Board may order a consultative exam from a non-treating source while awaiting receipt of medical source evidence. If the Board ask the claimant to do so, he or she must contact the medical sources to help us get the medical reports. The Board may also ask the claimant to provide evidence about his or her—

- (1) Age;
- (2) Education and training;
- (3) Work experience;
- (4) Daily activities both before and after the date the claimant says that he or she became disabled;
- (5) Efforts to work; and
- (6) Any other evidence showing how the claimant's impairment(s) affects his or her ability to work. (In §§ 220.125 through 220.134, we discuss in more de-

tail the evidence the Board needs when it considers vocational factors.)

(Approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030, 3220-0106 and 3220-0141)

### § 220.46 Medical evidence.

(a) *Acceptable sources.* The Board needs reports about the claimant's impairment(s) from acceptable medical sources. Acceptable medical sources are—

- (1) Licensed physicians;
- (2) Licensed osteopaths;
- (3) Licensed or certified psychologists;
- (4) Licensed optometrists for the measurement of visual acuity and visual fields (a report from a physician may be needed to determine other aspects of eye diseases); and
- (5) Persons authorized to furnish a copy or summary of the records of a medical facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Railroad Retirement Board, Social Security Administration, Department of Veterans Affairs, or State agency.

(b) *Medical reports.* Medical reports should include—

- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, x-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms);
- (5) Treatment prescribed, with response to treatment and prognosis; and
- (6)(i) Statements about what the claimant can still do despite his or her impairment(s) based on the medical source's findings on the factors under paragraph (b)(1) through (5) of this section (except in disability claims for remarried widow's and surviving divorced spouses). (See § 220.112).

(ii) Statements about what the claimant can still do (based on the medical source's findings on the factors under paragraph (b)(1) through (5) of this section) should describe—

(A) The medical source's opinion about the claimant's ability, despite his or her impairment(s), to do work-